

Remarks

This Preliminary Amendment and the accompanying Request for Continued Examination ("RCE") are being filed in response to the final Office Action mailed May 7, 2004 and Advisory Action mailed June 15, 2004. A Credit Card Payment Form (Form PTO-2038) authorizing payment of the fee for filing the RCE (\$770) is included with this Preliminary Amendment. Authorization is granted to charge any other fees, if necessary, for entry of this Preliminary Amendment to our Deposit Account No. 18-1644.

Claims 19-32 are pending. Claims 1-18 were cancelled without prejudice in a previously filed amendment. Claims 19 and 24 have been amended.

The Examiner has rejected applicant's claims 19, 21-24 and 26-28 under 35 U.S.C. § 102(e) as being anticipated by the Tanaka patent (U.S. Patent No. 6,329,964). The Examiner has further rejected applicant's claims 20 and 25 under 35 U.S.C. § 103(a) as being unpatentable over the Tanaka patent in view of the Shimada patent (U.S. Patent No. 5,640,171). Finally, the Examiner has rejected claims 30 and 32 under 35 U.S.C. § 103(a) based on the Tanaka patent taken in view of the Reymond patent (FR 2,517,916) and claims 29 and 31 also under 35 U.S.C. § 103(a) based on the Tanaka patent taken in view of the Chikazawa patent (U.S. Patent No. 6,052,166). These rejections are respectfully traversed.

As discussed in applicant's previous Amendment, applicant's independent claims 19 and 24 are directed to a display apparatus and corresponding method, respectively, for displaying a first image for a left eye and a second image for a right eye, including first and second detecting elements for detecting brightness around the left and right eye and first and second brightness adjusting units adapted to adjust image brightness based on the detected brightness. Applicant's claims 19 and 24 have been amended to further recite that the first detecting element is allocated on a side facing to a face of user and is allocated on the lower

side of a first display window which displays the first image, and the second detecting element is allocated on a side facing to a face of user and is allocated on the lower side of a second display window which displays the second image. Such a construction is not taught or suggested by the cited art of record.

The Examiner has argued, with respect to the Tanaka patent, in the final Office Action mailed May 7, 2004 as follows:

"Examiner disagrees with applicant this point of view since Figure 3 of Tanaka clearly teaches first and second detecting elements (16) for detecting brightness around the left and right eyes, respectively, each allocated on the lower side of the display window (14). . . . Figure 3 of Tanaka clearly shows the detecting elements (16) located below the display windows (14)."

The Examiner has further argued in response to applicant's remarks in applicant's Response after Final filed June 4, 2004:

"...the location of the detecting elements as recited in claims 19 and 24 is not patentable subject matter distinct from the location of the detecting elements of Tanaka. The detecting elements (16) of Tanaka may be allocated on the upper side of the display windows as applicant's argument, but it is inherent that the detecting elements (16) of Tanaka can be allocated on the lower side of the windows because Tanaka teaches the detecting elements can be allocated in different areas in HMD such as detecting elements (16) in Figure 3 and detecting elements (81) in Fig. 8. The detecting elements of the invention can be allocated different areas in HMD (see Figures 12-14) as the same way as Tanaka which the detecting elements can be allocated in different areas in HMD (see Figures 3 and 8 of Tanaka). There is no specific which area (i.e., upper, lower, side areas of display window) is better than another (or unexpected result from allocated only on the lower side; this is not a case because the detecting elements of the invention can be placed different areas in HMD as discussed above)."

Applicant again respectfully disagrees with the Examiner. FIG. 3 of the Tanaka patent shows light sensors 16 allocated to the inside of the HMD, and FIG. 8 of Tanaka shows light sensors 81 allocated to the outside of the HMD. However, Tanaka does not teach or suggest that the first detecting element is allocated on a side facing to a face of user and is allocated

on the lower side of a first display window which displays the first image, and the second detecting element is allocated on a side facing to a face of user and is allocated on the lower side of a second display window which displays the second image. In other words, in addition to the specific vertical position of the first and second detecting elements on the lower side of the first and second display windows, respectively, Tanaka does not teach that the first and second detecting elements are each allocated on a side facing to a face of the user, as required by amended claims 19 and 24.

There is thus nothing taught or suggested in FIGS. 3 and 8 of the Tanaka patent as to the positioning of the sensors 16 in relation to the LCDs 14, namely, that they be allocated to a lower side thereof, and that they be allocated to a side facing to a face of the user. Moreover, there is nothing stated in the written description of the patent which teaches or suggests this specific positioning of the detecting elements.

Additionally, it is not inherent that the detecting elements be allocated on the lower side of the LCDs, because Tanaka only shows positioning of the elements inside and outside the HMD and not various positioning inside the HMD. Also, for inherency to apply, the construction must inevitably follow what is disclosed, which is not the situation here. Finally, to establish patentability applicant need not demonstrate improved or unexpected results, as the Examiner has suggested.

Accordingly, for all the above reasons, applicant's amended independent claims 19 and 24, and their respective dependent claims, in reciting "wherein the first detecting element is allocated on a side facing to a face of user and is allocated on the lower side of a first display window which displays the first image, and wherein the second detecting element is allocated on a side facing to a face of user and is allocated on the lower side of a second display window which displays the second image," patentably distinguish over Tanaka patent.

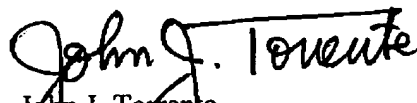
The cited Shimada, Reymond and Chikazawa patents add nothing to the Tanaka patent to change this conclusion.

In view of the above, it is submitted that applicant's claims patentably distinguish over the cited art of record. Reconsideration of the claims is respectfully requested. If the Examiner believes that an interview would expedite consideration of this Preliminary Amendment or of the application, a request is made that the Examiner telephone applicant's counsel at (212) 682-9640.

Dated: June 29, 2004

Respectfully submitted,

ROBIN, BLECKER & DALEY
330 Madison Avenue
New York, New York 10017
T (212) 682-9640


John J. Torrente
Reg. No. 26,359
An Attorney of Record